

HOUSE LABOR AND HUMAN RESOURCES COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 653

**47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005**

AN ACT

RELATING TO EMPLOYMENT; ESTABLISHING A PRESUMPTION OF EMPLOYER  
AND EMPLOYEE RELATIONSHIP IN THE CONSTRUCTION INDUSTRIES;  
SETTING STANDARDS TO INDICATE WHEN A WORKER IS AN INDEPENDENT  
CONTRACTOR AND NOT AN EMPLOYEE; IMPOSING CRIMINAL PENALTIES AND  
LICENSE SANCTIONS FOR IMPROPERLY REPORTING AN EMPLOYEE AS AN  
INDEPENDENT CONTRACTOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Construction Industries  
Licensing Act is enacted to read:

"[NEW MATERIAL] EMPLOYER AND EMPLOYEE RELATIONSHIP--  
INDEPENDENT CONTRACTOR--IMPROPER REPORTING--PENALTY--LICENSE  
SANCTIONS.--

A. For purposes of the employer and employee  
relationship within those construction industries subject to

.156612.1

underscored material = new  
[bracketed material] = delete

1 the Construction Industries Licensing Act, a contractor who is  
2 an employer shall consider a person providing labor or services  
3 to the contractor for compensation to be an employee of the  
4 contractor and not an independent contractor unless the  
5 following standards indicative of an independent contractor are  
6 met:

7 (1) the person providing labor or services is  
8 free from direction and control over the means and manner of  
9 providing the labor or services, subject only to the right of  
10 the person for whom the labor or services are provided to  
11 specify the desired results;

12 (2) the person providing labor or services is  
13 responsible for obtaining business registrations or licenses  
14 required by state law or local ordinance for the person to  
15 provide the labor or services;

16 (3) the person providing labor or services  
17 furnishes the tools or equipment necessary to provide the labor  
18 or services;

19 (4) the person providing labor or services has  
20 the authority to hire and fire employees to perform the labor  
21 or services;

22 (5) payment for labor or services is made upon  
23 completion of the performance of specific portions of a project  
24 or is made on the basis of a periodic retainer; and

25 (6) the person providing labor or services

.156612.1

1 represents to the public that the labor or services are to be  
2 provided by an independently established business. A person is  
3 engaged in an independently established business when four or  
4 more of the following circumstances exist:

5 (a) labor or services are primarily  
6 performed at a location separate from the person's residence or  
7 in a specific portion of the residence that is set aside for  
8 performing labor or services;

9 (b) commercial advertising or business  
10 cards are purchased by the person, or the person is a member of  
11 a trade or professional association;

12 (c) telephone or email listings used for  
13 the labor or services are different from the person's personal  
14 listings;

15 (d) labor or services are performed only  
16 pursuant to a written contract;

17 (e) labor or services are performed for  
18 two or more persons within a period of one year; or

19 (f) the person assumes financial  
20 responsibility for errors and omissions in labor or services as  
21 evidenced by insurance, performance bonds and warranties  
22 relating to the labor or services being provided.

23 B. A contractor who intentionally and willfully  
24 reports to a state agency that an employee is an independent  
25 contractor or who, for the purposes of a program administered

.156612.1

1 by a state agency, intentionally and willfully treats or  
2 otherwise lists an employee as an independent contractor when  
3 the employee's status does not meet the standards indicative of  
4 an independent contractor as identified in Subsection A of this  
5 section is guilty of a misdemeanor and shall be punished by a  
6 fine of not more than five thousand dollars (\$5,000) or by  
7 imprisonment for a definite term not to exceed six months or  
8 both. For the purposes of this subsection, "state agency"  
9 means an administration, board, commission, department or  
10 division of this state.

11 C. Conviction of a contractor for violating  
12 Subsection B of this section shall be grounds for the  
13 commission to take action to suspend, revoke or refuse to renew  
14 a license issued by the division to that contractor."